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SENATE BILL 619

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE CORPORATE  
INCOME AND FRANCHISE TAX ACT TO EXCLUDE INCOME FROM ENERGY  
EXPORTS FROM TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-2 NMSA 1978 (being Laws 1986,  
Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate  
Income and Franchise Tax Act and unless the context requires  
otherwise:

A. "affiliated group" means that term as it is used  
in the Internal Revenue Code;

B. "bank" means any national bank, national banking  
association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's

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1 income defined as taxable income and upon which the federal  
2 income tax is calculated in the Internal Revenue Code for  
3 income tax purposes plus, for taxable years beginning on or  
4 after January 1, 1991, the amount of the net operating loss  
5 deduction allowed by Section 172(a) of the Internal Revenue  
6 Code, as that section may be amended or renumbered, and claimed  
7 by the taxpayer for that year; "base income" also includes  
8 interest received on a state or local bond;

9 D. "corporation" means corporations, joint stock  
10 companies, real estate trusts organized and operated under the  
11 Real Estate Trust Act, financial corporations and banks, other  
12 business associations and, for corporate income tax purposes,  
13 partnerships and limited liability companies taxed as  
14 corporations under the Internal Revenue Code;

15 E. "department" means the taxation and revenue  
16 department, the secretary of taxation and revenue or any  
17 employee of the department exercising authority lawfully  
18 delegated to that employee by the secretary;

19 F. "fiscal year" means any accounting period of  
20 twelve months ending on the last day of any month other than  
21 December;

22 G. "Internal Revenue Code" means the United States  
23 Internal Revenue Code of 1986, as amended;

24 H. "net income" means base income adjusted to  
25 exclude:

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1 (1) income from obligations of the United  
2 States less expenses incurred to earn that income;

3 (2) other amounts that the state is prohibited  
4 from taxing because of the laws or constitution of this state  
5 or the United States;

6 (3) income from sales, delivery and use of  
7 energy outside of the state of New Mexico, at a rate of one  
8 hundred percent in the first taxable year following the  
9 effective date of this 2009 act, seventy-five percent in the  
10 second year, fifty percent in the third year and twenty-five  
11 percent in each year thereafter;

12 [~~(3)~~] (4) for taxable years that began prior  
13 to January 1, 1991, an amount equal to the sum of:

14 (a) net operating loss carryback  
15 deductions to that year from taxable years beginning prior to  
16 January 1, 1991 claimed and allowed, as provided by the  
17 Internal Revenue Code; and

18 (b) net operating loss carryover  
19 deductions to that year claimed and allowed; and

20 [~~(4)~~] (5) for taxable years beginning on or  
21 after January 1, 1991, an amount equal to the sum of any net  
22 operating loss carryover deductions to that year claimed and  
23 allowed, provided that the amount of any net operating loss  
24 carryover from a taxable year beginning on or after January 1,  
25 1991 may be excluded only as follows:

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1 (a) in the case of a timely filed  
2 return, in the taxable year immediately following the taxable  
3 year for which the return is filed; or

4 (b) in the case of amended returns or  
5 original returns not timely filed, in the first taxable year  
6 beginning after the date on which the return or amended return  
7 establishing the net operating loss is filed; and

8 (c) in either case, if the net operating  
9 loss carryover exceeds the amount of net income exclusive of  
10 the net operating loss carryover for the taxable year to which  
11 the exclusion first applies, in the next four succeeding  
12 taxable years in turn until the net operating loss carryover is  
13 exhausted; in no event may a net operating loss carryover be  
14 excluded in any taxable year after the fourth taxable year  
15 beginning after the taxable year to which the exclusion first  
16 applies;

17 I. "net operating loss" means any net operating  
18 loss, as defined by Section 172(c) of the Internal Revenue  
19 Code, as that section may be amended or renumbered, for a  
20 taxable year as further increased by the income, if any, from  
21 obligations of the United States for that year less related  
22 expenses;

23 J. "net operating loss carryover" means the amount,  
24 or any portion of the amount, of a net operating loss for any  
25 taxable year that, pursuant to Paragraph [~~(3) or~~] (4) or (5) of  
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1 Subsection H of this section, may be excluded from base income;

2 K. "person" means any individual, estate, trust,  
3 receiver, cooperative association, club, corporation, company,  
4 firm, partnership, limited liability company, joint venture,  
5 syndicate or other association; "person" also means, to the  
6 extent permitted by law, any federal, state or other  
7 governmental unit or subdivision or agency, department or  
8 instrumentality thereof;

9 L. "secretary" means the secretary of taxation and  
10 revenue or the secretary's delegate;

11 M. "state" means any state of the United States,  
12 the District of Columbia, the commonwealth of Puerto Rico, any  
13 territory or possession of the United States or political  
14 subdivision thereof or any political subdivision of a foreign  
15 country;

16 N. "state or local bond" means a bond issued by a  
17 state other than New Mexico or by a local government other than  
18 one of New Mexico's political subdivisions, the interest from  
19 which is excluded from income for federal income tax purposes  
20 under Section 103 of the Internal Revenue Code, as that section  
21 may be amended or renumbered;

22 O. "taxable year" means the calendar year or fiscal  
23 year upon the basis of which the net income is computed under  
24 the Corporate Income and Franchise Tax Act and includes, in the  
25 case of the return made for a fractional part of a year under

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1 the provisions of that act, the period for which the return is  
2 made;

3 P. "taxpayer" means any corporation subject to the  
4 taxes imposed by the Corporate Income and Franchise Tax Act;  
5 and

6 Q. "unitary corporations" means two or more  
7 integrated corporations, other than any foreign corporation  
8 incorporated in a foreign country and not engaged in trade or  
9 business in the United States during the taxable year, that are  
10 owned in the amount of more than fifty percent and controlled  
11 by the same person and for which at least one of the following  
12 conditions exists:

13 (1) there is a unity of operations evidenced  
14 by central purchasing, advertising, accounting or other  
15 centralized services;

16 (2) there is a centralized management or  
17 executive force and centralized system of operation; or

18 (3) the operations of the corporations are  
19 dependent upon or contribute property or services to one  
20 another individually or as a group."

21 Section 2. APPLICABILITY.--The provisions of this act  
22 apply to taxable years beginning on or after January 1, 2010.